

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.11.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.29624 of 2018 and
W.M.P.No.34593 of 2018

C.Shanmugam

.. Petitioner

Vs.

1. The District Collector,
Vellore District, Vellore
2. The Tahsildar,
Walaja Taluk, Vellore District
3. The Block Development Officer,
Panchayat Union, Arcot,
Vellore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the entire records in pursuant to the eviction order issued by the 3rd Respondent vide Na.Ka.No.A6/2144/2017 dated 05.09.2018 and quash the same.

For Petitioner : Ms.M.R.Sakunthala

For Respondents : Mr.S.N.Parthasarathy for R1 to R3
Government Advocate

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard both sides.

2. The Petitioner was issued with a Memo No.3 dated 05.09.2018 [Reference No.Na.Ka.m6/2144/2017] whereby and whereunder he was informed that in Poramboke Survey No.6 of Thazanur Panchayat, he had constructed a house in the Government road poramboke, on the east-north side, he had constructed a compound wall and also put up a stair case coupled

with cement sheet, raised an hollow blocks wall and had encroached an extent of 130 square meter and therefore, he was required to remove the said encroachment by means of a final notice. The Petitioner was also further informed that if he fails to remove the encroachment by himself, then, the said encroachment would be removed and the expenses incurred by the Panchayat will have to be paid by him directly.

3. The Petitioner at Paragraph No.3 of the affidavit had clearly averred that he is in legal possession of the lands mentioned in the notice and the said land does not form part of any road. However, this aspect was not considered by the Respondents and therefore, the Impugned Eviction Order was issued against him, which is an illegal one.

4. Per contra, it is the submission of the Learned Additional Government Pleader for the Respondents 1 to 3 that the Petitioner had encroached an extent of 130 square meters by putting up a compound wall, stair case, putting up a cement sheet and also constructed a hollow blocks wall in Thazanur Panchayat Poramboke Survey No.6 and he was issued with a Memo No.3 [Final Notice] dated 05.09.2018 and as such, the Petitioner is liable to be evicted from the encroached place.

5. It transpires that earlier one S.Padmini had filed W.P.No.13373 of 2018 before this Court against the District Collector, Vellore District and three others, wherein the Petitioner in the present Writ Petition, [W.P.No.29624 of 2018] was shown as 4th Respondent. This Court, on 05.06.2018 in W.P.No.13373 of 2018 had directed the 2nd Respondent / Tahsildar, Walaja Taluk, Vellore District to issue necessary clarification sought for by the 3rd Respondent / Block Development Officer, Arcot, Vellore District as to his power to remove the encroachment and the said exercise is to be carried out within a period of four weeks from the date of receipt of a copy of this order. Further, the 3rd Respondent / Block Development Officer, Arcot, Vellore District upon receipt of said communication from the Tahsildar, Wallajah Taluk, Vellore District was directed to put the 4th Respondent [Shanmugam, Petitioner in W.P.No.29624 of 2018] on notice and thereafter, take action to remove the alleged encroachment in accordance with law within a period of six weeks thereafter and communicate the decision taken, to the Petitioner as well as to the 4th Respondent therein.

6. A perusal of the impugned order dated 05.09.2018 issued by the Block Development Officer, Panchayat Union, Arcot indicates that there was a reference to the earlier office letter dated 07.03.2018, 28.05.2018, 23.07.2018 and 06.08.2018.

Apart from that, a reference being made to Government Order No. 540 in regard to the removal of encroachment, Order in W.P.No.13373 of 2018 etc., Furthermore, the Petitioner in the typed set of papers to the present Writ Petition had enclosed B.Memo dated 31.07.2003 issued in his favour, wherein the village was referred to as Thazhanur, Survey and Sub-Division 43 B Character of land as Pattai, enjoyment portion was mentioned as 0010 out of total extent of 0850 and the nature of enjoyment was specifically mentioned as 'Thatched House'. Now, the present Memo 3 [Impugned Notice] dated 05.09.2018 issued to the Petitioner speaks of the construction of compound wall, construction of stair case, putting up of cement sheet and raising of hallow block wall in Survey No.6 of Thazhanur Village. After the original B.Memo Notice issued under the Tamilnadu Land Encroachment Act, 1905 to the Petitioner's favour, from the Thatched house, the Petitioner had put a compound wall etc., which is an remarkable improvement as regards encroachment made by the Petitioner mentioning an extent of 130 sq.mtr., in all. Eventhough, it is represented on behalf of the Petitioner that the Petitioner had paid House Tax Receipts and Water Charge receipts and is in possession of electricity supply connection and has a card in his name, yet these things are issued for in respect of Petitioner's occupation and for enjoyment of requisite water supply and consumption of electricity charges and this will not any way heighten the case of the Petitioner, in the considered opinion of this Court, when the Petitioner is an encroacher in the subject property in question.

7. Since the Petitioner was issued with the Memo No.3 dated 05.09.2018 directly without providing necessary opportunity to him to explain his possession, especially, when he has taken a specific stand in the Writ Petition that the land in question does not form part of any road, this Court is of the considered view that the Petitioner shall explain his possession of the subject property in writing within a week from the date of receipt of a copy of this order. After receipt of Reply / Representation from the Petitioner, the 3rd Respondent will look into the same and pass final orders, after providing necessary opportunity to the Petitioner to produce necessary documentary evidence on his behalf to substantiate his version. In case, the Petitioner fails to establish his case and per contra, if the 3rd Respondent comes to a definite / unimpeachable conclusion that the Petitioner encroached upon the property and therefore, he is liable to be removed, then, the 3rd Respondent shall take necessary action for removal of the encroachment made by the Petitioner from the subject property within a period of two weeks thereafter. Till such time, it is made quite clear that the possession of the Petitioner in the subject property shall not be displaced / disturbed.

With the aforesaid observations and directions, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssd

To

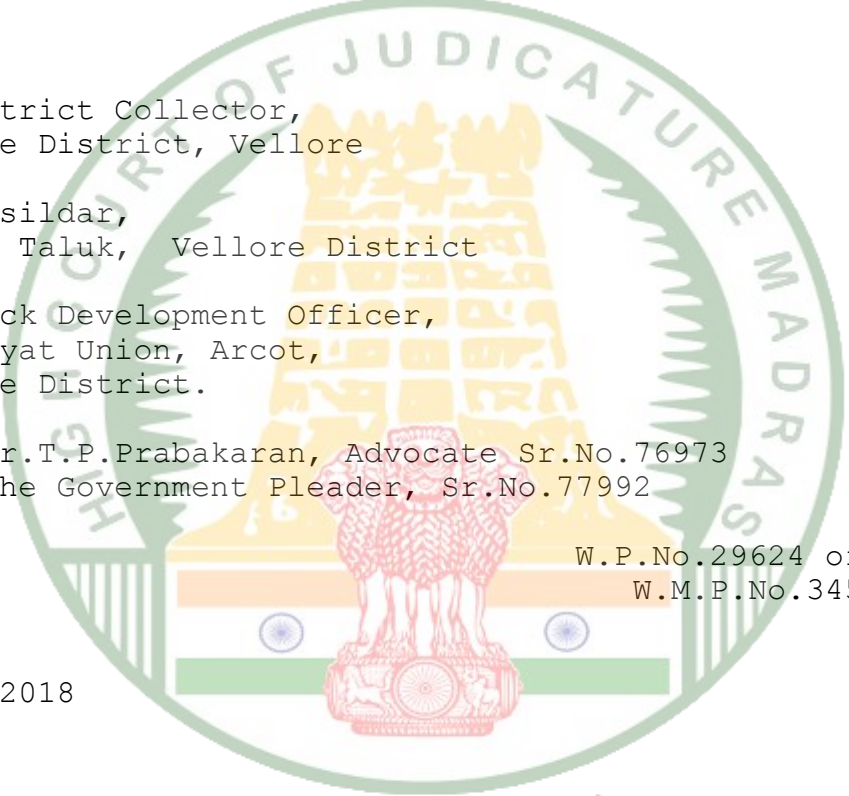
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3. The Block Development Officer,
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Vellore District.

+1 cc to Mr.T.P.Prabakaran, Advocate Sr.No.76973

+1 cc to The Government Pleader, Sr.No.77992

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VGI (CO)
CSL/04.12.2018



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